

BEFORE THE ARBITRATOR

ROSE MARIE BARON

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In the Matter of the Impasse between

International Union of Operating Engineers,  
Local 234, Union

and

CEO #18/Sector 1

Union County, Employer

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APPEARANCES

MacDonald Smith, Attorney at Law, appearing on behalf of the International Union of Operating Engineers, Local 234.

Lou Herrera, HR-OneSource, appearing on behalf of Union County.

I. BACKGROUND

Union County is a municipal employer (hereinafter referred to as the "County" or the "Employer"). The International Union of Operating Engineers, Local 234 (the "Union") is the exclusive bargaining representative of certain County employees, i.e., a unit consisting of all employees of the Secondary Road Department, including but not limited to: Equipment Operators, Truck Drivers and Laborers. The County and the Union have been parties to a collective bargaining agreement covering a term from July 1, 2000 to June 30, 2003. The parties entered into collective bargaining for a successor agreement, however, they were not able to reach a voluntary settlement. The undersigned was selected by the parties from a panel submitted by the Iowa Public Employment Relations Board and received the order of appointment dated January 27, 2003. Hearing in this matter was held on April 17, 2003 at the

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Union County Court House in Creston, Iowa. A tape recording of the proceedings was made. At the hearing the parties presented documentary evidence and an opportunity was accorded for questions by the parties' representatives. Briefs were submitted by the parties according to an agreed-upon schedule. The record was closed on April 30, 2003.

## II. ISSUES AND FINAL OFFERS

The parties have agreed that wages and health insurance are to be considered as a single issue and vacation as a single issue.

### A. Wages and health insurance

The Union's final offer: Wage increase \$.35 per hour; no change in health insurance.

The County's final offer: Wage increase of \$1.35 per hour tied to the adoption of a new insurance policy (Adoption of Plan B -- employee contributes \$40 per week; Adoption of Plan C -- employee contributes \$25 per week; Adoption of Plan D -- employee contributes \$0 per week).

### B. Vacation

The Union proposes to change the current requirement of 25 years of service to earn four weeks (20 days) of vacation to 18 years.

The County proposes no change in the vacation benefit.

## III. STATUTORY CRITERIA

Iowa Code, Section 20.22(9) Binding Arbitration, provides:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved **public employees with those of other public employees doing**

**comparable work**, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations. (emphasis added)

#### IV. POSITION OF THE PARTIES

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their post-hearing briefs which were carefully considered by the arbitrator. What follows is a summary of these materials and the arbitrator's analysis in light of the statutory factors noted above. Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, that matter will be addressed first.

##### A. The Comparables

###### 1. The Union

Inspection of a map showing Union County and the surrounding, geographically proximate counties displays the Union's selection of seven comparables, i.e., Adair, Adams, Clark, Decatur, Madison, Ringgold, and Taylor counties (Union Ex. 1, Division 1). All of these counties road departments are organized.

###### 2. The County

The County provided comparable data in its survey of benefit and wage costs (County Ex. 2). In addition to the seven comparables proposed by the Union, the County has listed seven additional counties: Audubon, Cass, Guthrie, Lucas, Montgomery, Page, and Wayne. At hearing, the County acknowledged that these counties were used in a 1997 Fact-

Finding, but had not been agreed to.<sup>1</sup> It is noted that in its post-hearing brief the County refers to, and attaches, Union exhibits relating to current rates and settlements for patrol operator (Ex. 1) and insurance premiums (Ex. 2) which utilize only the Union's seven comparable counties. There is no further mention of the additional seven counties which the County provided in its Exhibit 2.

### 3. Discussion

The County has not provided the arbitrator with any data which would indicate why the added seven counties were relied upon. There is no map which would give some picture of geographic proximity nor any economic, size of workforce, or population data which would support their inclusion. Lacking such information the arbitrator has concluded that the seven comparable communities proposed by the Union are appropriate and shall be adopted for purposes of determining which of the party's final offer is the more reasonable.

### B. Wages and Health Insurance

#### 1. The Union

The Union asserts that the County has presented no evidence that it lacks the ability to pay for the Union's wage and insurance proposal. Rather, it bases its position on the large increase in health insurance costs and an anticipated increase next year. Thus the County has devised a new scheme which it has instituted for its non-organized employees and now attempts to impose upon its represented employees having failed to achieve that result at the bargaining table.

The Union is mindful of the rising costs of medical care and health insurance. However the Union challenges the County's failure to explore alternative plan changes with the Union in

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<sup>1</sup>It is unclear whether either or both the Union and the County had not agreed to these comparables or whether the Fact-Finder had independently selected them.

order to keep costs down without the need for employee premium contributions.

The Union concedes that the majority of counties require employee premium payments (Union Ex. 1; County Ex. 2). However, the County's analysis does not take into consideration that the Union has historically taken less in wages in exchange for the health insurance plan as it presently exists. The parties' evidence shows that Union County employees are last in hourly wages in both comparison groups (Union Ex. 1; County Ex. 2, pages 10-12).

The Union objects to the County's plan for employees to go from no premium payment to \$1.00 per hour. Once that level is in the contract, it will become the baseline for future negotiations. The County's proposed employee contribution plan will continue to be at the high end of total compensation among comparables, and not make a significant change.

A further argument of the Union relates to the failure of the County to explore alternatives in cost-sharing with the Union before imposing high premium contributions on the bargaining unit. It is asserted also that the County's plan shifts the complete risk of monetary loss from medical costs to the employee because of greater out-of-pocket expenses.

The Union objects to the County's reliance on the data in its Exhibit 1. This material is inappropriate since it reflects private sector data while Iowa Code Section 20.22(9) provides for comparisons with public employers only.

The Union asks that the employees in this bargaining unit, who have accepted a lesser base wage rate than the comparables as a trade-off for a better health insurance benefit, be allowed to continue with that pattern.

## 2. The County

The County relies on a study conducted by David P. Lind and Associates, L.C. for support of its position on health insurance. In summary, this study shows that the overall contribution by employees is \$236 per month -- substantially lower than the County's proposal.

The average deductible in the study is \$384 single and \$823 family -- higher than the County's Plan B deductible of \$250/\$500. The average out-of-pocket expense in the study is \$1,284 single and \$2,654 family -- far higher than for the proposed Plan B.

County exhibits show that the combined hourly rate and cost of insurance benefit places Union County employees as the highest of the comparables. Insurance benefits are of high quality; there is no evidence to the contrary based on the comparables. Union exhibits show that all employees, except for Madison and Union County, contribute significantly to dependant premiums.

The County points to Union Ex. 1 to show that the majority of July 2003 settlements are around 3.0%. The Union's proposed increase of \$.35 amounts to a 2.8% increase, close to what other bargaining units have settled for. The Union asserts that it is willing to take a lesser wage increase in order to continue paying nothing toward premiums despite the fact that the employees in the majority of comparables all contribute. However, the Union, it is contended, has not taken into consideration that premiums can reasonably be assumed to go up in 2003.

Under the County's proposal, wages would increase 10.8%. If a wage increase in a non-settled county such as Adams were to be 4%, it is asserted that Union County employees would have a higher rate of pay. It is noted that although Decatur County is at \$14.95 per hour, the employees there contribute \$477 for their dependent coverage.

The County concludes that its proposal is reasonable and logical. It is intended to place the employees in a comparable base wage; in future, their raises should be in line with other comparable counties. The employer's position that employees contribute to dependent coverage is in line with other comparable counties. Taken as a whole, the employer's position is more reasonable.

### 3. Discussion

In this case, the parties have agreed to consider wages and health insurance benefits as a single issue. The County's wage offer of \$1.35 per hour (\$1.00 more than the Union's offer) is designed to offset a proposed employee premium contribution which had not existed in the past. If an employee elects to participate in Plan B, which offers the most comprehensive coverage of three plans (B, C, and D), it will cost the employee \$1.00 per hour or \$40.00 per week -- effectively wiping out the wage increase.<sup>2</sup>

The County relies on the Lind study (County Ex. 1) for its health insurance position that employee contributions are prevalent for both single and family plans. However, the County was unable to provide information at hearing about the procedures utilized by Lind and Associates when conducting their survey. Basic information including such facts as number of public sector respondents versus private sector, as well as a break down of unionized versus non-represented employees, a more detailed account of the number of employees falling into each of the divisions of size of respondents' work force, whether executive/managerial personnel were included in each employer's data, etc. For example, if 500 employers responded to the survey and 60% were in the private sector and 40% in the public sector, we would still need to know for purposes of comparability with Union County's highway bargaining unit, what percent of the latter category was unionized. It might also be necessary to narrow that data to distinguish between white-collar and blue-collar organized public employees.

The arbitrator is further guided by Iowa law in concluding that County Ex. 1 does not provide the proper basis for comparison in this case, i.e., Sec. 20.22(9) limits the arbitrator to a "comparison of wages, hours and conditions of employment of the involved public employees

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<sup>2</sup>There was no direct evidence on the benefit to employees who chose Plans C or D and whose contributions would be \$25 and \$0 respectively. It would appear that they would increase their take-home pay but lessen the degree of health insurance coverage they would receive compared to Plan B.

with those of other public employees doing comparable work." Thus the arbitrator must conclude that the information provided in County Ex. 1 is far too ambiguous to be afforded any weight in these considerations.

The arbitrator has carefully considered the comparisons submitted by the parties and has reached several conclusions.

a. The Union's offer of \$.35 per hour, which equals 2.8%, is less than the five settled comparables : Adair, Clark, Decatur, Ringgold, and Taylor. The median (average) percent increase is \$.43 or 3.0%.<sup>3</sup> Union County falls slightly below the median percent increase.

b. There is no question that Union County's hourly pay rate falls well below the median of the comparable counties, even with a proposed 3% increase in 2003. Union Ex. 1 contains a table showing the hourly rate for patrol operators in the five settled counties:

<u>County</u>	<u>7/03 increase</u>
Adair	\$ 13.64
Clarke	14.15
Decatur	14.95
Ringgold	14.62
Taylor	13.63
Median	14.15
Union	12.84 (with Union's proposed increase)

Inspection of this table shows that Union's county wage proposal deviates from the median hourly rate by minus \$1.31.

The Union has conceded that the lower hourly wage historically received by bargaining unit members was a trade-off for not being required to contribute toward health insurance premiums. Thus, Local 234 members have made a choice -- less spendable income for a

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<sup>3</sup>The median is utilized rather than the arithmetic mean. It is the mid-point of the range of figures and avoids skewing the result if there are very high or very low numbers.



highly valued health insurance benefit. A comparison of employee spendable earnings in 2002 has been provided by the Union in its Exhibit 1. These data clearly show that Union County employees who make no contribution to health insurance premiums, and received \$12.49 per hour, still fall only \$.12 above the median of \$12.37 (the range of spendable earnings is from a low of \$10.80 to a high of \$13.69). This confirms the Union's position that the historical pattern of accepting a lower wage increase in order to maintain the practice of no contributions to health insurance has not put Union County employees in a better position than its comparables.

Based on the totality of the record and the discussion above the arbitrator is persuaded that the Union's final offer on wages and health insurance is the more reasonable and it shall therefore be adopted and included in the successor collective bargaining agreement between Union County and the International Union of Operating Engineers, Local 234.

#### B. Vacation

##### 1. The Union

The Union has sought to enhance the vacation benefit for long-term employees by lowering the present 25-year requirement to earn four weeks of vacation to 18 years. It is pointed out that Union County mirrors the seven comparable communities for one week of vacation after one year and two weeks of vacation after two years. Variances are observed in the table presented in Union Ex. 1 for earning three, four, and five weeks. In order to earn four weeks, Union County employees must work much longer than the comparables, i.e., 25 years. The Union characterizes its final offer on vacation as a modest proposal in line with the comparables.

##### 2. The County

The County argues that no change should be made in the vacation benefit. It is clear

that Union County employees do not have the vacation benefits that the surrounding counties enjoy. However, the enormous costs of both Employer and Union final offers will reach 10% without considering vacation. It is contended that any change in vacation benefits should be considered in the collective bargaining process when insurance is not a major issue.

### 3. Discussion

Review of the vacation comparables provided in Union Ex. 1 confirms the Union's position that Union County employees must work several years longer to receive a four-week vacation. The range of years of service in order to receive four weeks vacation in the seven comparables is 10 years (Madison) to 18 years (Adair). Three of the counties, Adams, Decatur, and Ringgold require 15 years of service (the median). It is obvious that Union County employees must work 10 years longer to achieve the median. Even if the required time to reach the goal of four weeks vacation were lowered to 18 years, Union County would still deviate from the average by three years and fall at the high end of the range along with Adair County.

While the arbitrator understands the Union's desire to improve benefits for its members, it does not seem that comparability alone is sufficient to achieve this goal. Arbitrators have long held that two conditions must be satisfied by the moving party to sustain its burden of proof to alter the *status quo*. The first condition is that there must be a demonstrated need for the change. The second condition, if the need has been shown, is whether the moving party provided a *quid pro quo* for the proposed change. Thus, when a party proposes a significant reformation of a fundamental aspect of the collective bargaining agreement, some concession or trade-off is offered which would persuade the other party to accept the offer.

The arbitrator does not believe that the Union has demonstrated a need for the proposed improvement in the vacation benefit despite its desire to bring this benefit more in

line with the comparable counties. But even if such a need had been shown, there is no evidence that the Union proposed any trade-off to reach this end. The arbitrator concludes that the issue of improvement of vacation benefits is more properly dealt with at the bargaining table. The arbitrator concludes that the final offer of the County to retain the status quo is the more reasonable of the two final offers. It is therefore held that Article 9, Leave with Pay, Vacation Leave, shall be continued without change in the successor collective bargaining agreement between Union County and the International Union of Operating Engineers, Local 234.

#### VI. AWARD

Based upon the discussion above, arbitrator makes the following award:

1. The final offer of the Union on Wages and Health Insurance shall be adopted and incorporated in the parties' successor Collective Bargaining Agreement.
2. The final offer of the Employer on Vacations shall be adopted and incorporated in the parties' successor Collective Bargaining Agreement.

Dated this 30th day of May, 2003 in Milwaukee, Wisconsin.

  
Rose Marie Baron, Arbitrator